

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

KEITH BAILEY,

Plaintiff,

v.

CIVIL ACTION NO. 5:04-0428

WERNER CO., a Pennsylvania corporation,
and LOWE'S OF WEST VIRGINIA, INC.,
a West Virginia corporation,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending before the court is the plaintiff's motion for summary judgment [Docket 15]. The plaintiff has moved the court "to enter Summary Judgment" that certain "material facts exist without substantial controversy." For the following reasons, the motion [Docket 15] is hereby **DENIED**.

I. Standard of Review

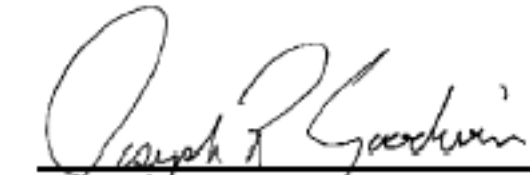
To obtain summary judgment, the moving party must show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Fed. R. Civ. P.* 56(c). In considering a motion for summary judgment, the court will not "weigh the evidence and determine the truth of the matter." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). Instead, the court will draw any permissible inference from the underlying facts in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587-88 (1986).

II. Analysis

In essence, the plaintiff has submitted a list of facts with no supporting evidence other than his own affidavit. The defendant filed a responsive brief that disputed the facts listed in the plaintiff's motion. In addition, the plaintiff has submitted no legal authority to indicate that he is entitled to judgment as a matter of law in accordance with Rule 56(c) of the Federal Rules of Civil Procedure. Accordingly, the briefs submitted to the court indicate: (1) that there is a dispute regarding all of the "material facts" submitted by the plaintiff and (2) that the plaintiff is not entitled to judgment as a matter of law.

The plaintiff's motion for summary judgment [Docket 15] is **DENIED**. The court **DIRECTS** the Clerk to send a copy of this Memorandum Opinion and Order to counsel of record and any unrepresented party.

ENTER: April 20, 2005



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE